

Michigan Department of Civil Service

REGULATION

Appointing Authority Letter Reference:	Effective Date: August 20, 2000	Index Reference:	Regulation Number: 5.02
Issuing Bureau: Human Resource Services	Rule Reference: Chapter 5 <u>Civil Service Commission Rules 5-4.1, 5-4.2, 5-4.3, 5-4.4</u>	Replaces: Compensation Procedure 2	
Subject: PREMIUM PAYMENT OF OVERTIME, ON-CALL COMPENSATION AND CALLBACK COMPENSATION			

1. PURPOSE

A. This regulation establishes the standards for the payment of overtime, on-call compensation, and callback compensation.

2. CIVIL SERVICE COMMISSION RULE REFERENCE

A. Rule 5-4.1 Additional Compensation

An appointing authority may require an employee to work under special conditions. An eligible employee working under the following special conditions is paid the pay premiums provided in this rule in accordance with the regulations.

B. Rule 5-4.2 Overtime

(a) Eligibility. The compensation schedules must identify each classification that is eligible for overtime pay. Overtime pay is paid to eligible employees for time in pay status in excess of 8 hours in a day and 40 hours in a week or as otherwise provided in the regulations.

(b) Rate. The overtime rate of pay is one and one-half times the employee's regular rate of pay, as defined in the regulations. The regulations may provide for accrual of compensatory time at the premium rate instead of a cash payment.

C. Rule 5-4.3 On-Call

(a) Eligibility. The compensation schedules must identify each classification that is eligible for on-call pay. On-call pay is paid to an eligible employee who is scheduled to be available to return to duty, work-ready, within a specific time.

(b) Rate. The on-call rate of pay is one hour of straight time pay for each 5 hours of on-call time.

D. Rule 5-4.4 Callback

(a) Eligibility. The compensation schedules must identify each classification that is eligible for callback pay. Callback pay is paid to an eligible employee who is not on scheduled on-call status but is called back to duty outside of normal working hours.

(b) Rate. Callback pay is paid at the overtime rate of pay. An eligible employee is paid for a minimum of 3 hours unless called back within 3 hours of the employee's regular starting time.

3. STANDARDS

A. Eligible ~~e~~Employees

1. ~~Non-Exempt Employees — Employees in classifications which are assigned FLSA code "Y" are eligible for overtime in accordance with the Federal Fair Labor Standards Act and/or applicable collective bargaining agreement. Employees in classifications which are assigned FLSA code "E" may be eligible for overtime based on the duties or work circumstances of the position or applicable collective bargaining agreement. (See class list in Section A for FLSA codes. See collective bargaining agreements for covered employees.)~~ Employees in classifications which are assigned eligibility code "N" are eligible for overtime. Eligible is represented as non-exempt in the Human Resources Management Network system. (See the Compensation Plan for eligibility codes.)

2. Overtime

a. Rate

- (1) The overtime rate is one and one-half times the employee's regular rate.
- (2) The regular rate is defined as the employee's base rate of pay plus any applicable shift premium, special pay premium (e.g., prison rate), on-call, longevity, or other pay, except overtime premium. ~~(See Section C for longevity and flexible benefits overtime schedules.)~~

b. Basis

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- (1) Overtime payment ~~shall be~~is made to eligible employees for time worked in excess of 8 hours in a day and 40 hours in a week.
 - (a) Overtime payment ~~shall be~~is made to eligible employees working in Community Health facilities for time worked in excess of 8 hours in a day and 80 hours in a biweekly work period.
 - (b) Overtime payment ~~shall be~~is made to eligible law enforcement officers and corrections officers for time worked in excess of 8 hours in a day and 80 hours in a bi-weekly work period.
- (2) Premium payment ~~shall~~must not be duplicated (pyramided) for the same hours worked.
- (3) Time worked is defined as:
 - (a) All hours actually spent in pay status; and,
 - (b) Travel time required by and at the discretion of the employer before, during, or after the regularly scheduled work day.
- (4) All paid leave (annual leave, sick leave, military leave, administrative leave) is to be counted as work time in computing daily and weekly overtime. Holiday credit is to be counted as work time in computing weekly overtime only. If an employee works on a holiday, premium payment for the first 8 hours worked on the holiday is due and payable only when 40 hours in a week are exceeded. (In the case of law enforcement officers, corrections officers, and employees working in Community Health facilities, premium payment is due when 80 hours in a bi-weekly work period are exceeded.) The employee has the option, at the convenience of the employer, to take another day in the same period as the holiday.
- (5) Part-time employees are eligible for premium overtime after completion of 8 hours in a day, not after completing their regular shift, if less than 8 hours.
- (6) A day is defined as a 24 hour period beginning at 12:01 a.m., unless otherwise authorized for definition by the director.

- (7) A week is defined as a seven day period beginning at 12:01 a.m. Sunday, unless otherwise authorized for definition by the director.
- (8) A bi-weekly work period consists of 80 hours of work, normally performed on ~~ten (10)~~ work days within the ~~fourteen (14)~~ consecutive calendar days which coincide with the current pay periods. A bi-weekly pay period is considered complete if the actual time worked, plus any paid administrative, annual, sick, military, or holiday leave, equals or exceeds 80 hours. The premium for overtime hours worked ~~shallis~~ not ~~be~~ counted as work time.

c. Control

- (1) The appointing authority has the right to require an employee to work overtime, and to see that the employee does not work unauthorized overtime.
- (2) The appointing authority is responsible for scheduling and authorizing overtime.
- (3) The appointing authority ~~shall~~must establish policies and procedures for scheduling and authorizing ~~of~~ overtime.
- (4) The appointing authority is responsible for pay for all overtime worked, even if overtime worked is not authorized, and the benefits of the overtime work are accepted by the appointing authority.

d. Scheduling

- (1) The daily or bi-weekly work schedule of an employee ~~shall~~must not be altered on a temporary basis to avoid premium overtime. The employee's work schedule ~~shall~~must be posted or the employee ~~shall~~must be notified of the next bi-weekly work schedule not less than 48 hours prior to the beginning of the bi-weekly work period.
- (a) If the employee's work schedule is changed during a bi-weekly work period or within 48 hours prior to the beginning of a pay period for the following pay period, the employee ~~shall-beis~~ eligible for overtime payment for all hours worked outside of the employee's original work schedule for the balance of the affected pay period.

- (2) To the extent that sufficient notice is available and the best interests of the state will allow, and giving consideration to work assignments and organizational units in the department, the employer ~~shall~~must schedule overtime work as equally as practicable among employees who normally perform the assigned duties.
- (a) An employee who declines to work overtime ~~shall be~~is counted as having worked in determining this "equal share".
- (b) If an insufficient number of employees normally performing the duties volunteer to work overtime, the overtime may be offered to other employees qualified to do the work.
- (c) The appointing authority may mandate overtime when an insufficient number of employees volunteer for scheduled overtime or there is an emergency.
- e. Timekeeping — Positive timekeeping records ~~shall~~must be maintained at the agency level for all eligible employees. Positive timekeeping is defined as recording the total number of hours worked and the total number of leave hours used on a daily and weekly basis with weekly totals (~~DMB form A-424~~).
- f. Method of Payment — The employer ~~shall~~must compensate employees for overtime with cash payment.
- g. Timeliness of Payment — The employer ~~shall~~must make a good faith effort to make payment for overtime worked on the pay day of the first pay period following the bi-weekly work period in which the overtime is worked.
- h. Compensatory Time
- (1) With the approval of the employer, the employee may, upon request, accrue compensatory time at the premium rate (time-and-one-half) in lieu of cash payment, if agreement to accrue compensatory time is reached before the work is performed.
- (2) The employee may accrue up to 240 hours of compensatory time at the premium rate. In the case of an employee engaged in public safety activity, emergency response activity or seasonal activity, the maximum accrual is 480 hours.

- (a) Public Safety activity refers to employees employed to enforce laws and maintain peace and order, who have the power to arrest, and have undergone, or are undergoing the specialized training. Corrections officers, by specific mention, are likewise covered.
- (b) Emergency response activity refers to rescue work and ambulance services.
- (c) Seasonal activity refers to work during lengthy, regular recurring periods of significantly increased demand.

Note: When compensatory time is approved, the employee must be paid in cash, by Gross Pay Adjustment, for all premiums (e.g., shift, hazard except T-rate and G-rate) due for the overtime hours worked at a time-and-one-half rate.

- (3) With the approval of the employer, the employee may, upon request, have the eight hour daily overtime provision waived and have a work schedule adjustment within the week in lieu of an accumulation of overtime. In the case of employees of Community Health facilities such adjustments are not allowed.

i. Scheduling of Compensatory Time

- (1) Compensatory time ~~shall be~~is used at the convenience of the employee subject to supervisory approval based on criteria applicable to use of annual leave.

Note: The employer is required to honor all requests for compensatory time off, unless to do so would be "unduly disruptive". ~~Mere inconvenience to the employer is insufficient basis for denying the request.~~

- (2) Compensatory time ~~shall~~must be used before annual leave except ~~where~~when an employee at the maximum annual leave cap would thereby lose annual leave.
- (3) If the employee has not used accrued compensatory time ~~credits~~ before the end of the fiscal year in which the ~~credits have been earned~~time has been accrued, the employee may be paid in cash at

the base rate for the compensatory time ~~credits~~ unused at the end of the fiscal year, or at the average base rate received during the last three years, whichever is higher. If the employee is not paid in cash, the compensatory time ~~credits shall be~~ carried forward into the next fiscal year.

- (4) Unused compensatory time ~~credits~~ accruals of an employee who resigns, retires, is dismissed, or transfers to a different appointing authority ~~shall be~~ paid at the employee's current base hourly rate, or at the average base rate received during the last three years, whichever is higher.
- (5) Unused compensatory time ~~credits~~ accruals of an employee who is laid off ~~shall be~~ paid at the base rate, or at the average base rate received during the last three years, whichever is higher. This does not apply to temporary layoffs.

Note: ~~Compensatory time credits may not be frozen~~ Freezing of compensatory time accruals is not allowed.

3. On-Call Compensation

- a. Rate — Employees scheduled for on-call duty ~~shall be~~ compensated at the rate of one hour of straight time pay for each ~~five (5)~~ hours of on-call duty.
- b. Basis
 - (1) "On-Call" is defined as the scheduled state of availability to return to duty, work ready, within a specified time period. General availability of employees as "backup" to working personnel in the event of extreme emergency is not considered as on-call.
 - (2) An employee actually required to return to duty ~~shall be~~ compensated in accordance with the regulations on callback compensation for those hours actually worked or for which payment under the callback procedure is made. (See Paragraph ~~D4~~, below.)
 - (3) ~~No~~ An employee ~~shall be~~ not paid on-call compensation for regularly scheduled duty hours or while on paid authorized leave.

c. Control

- (1) The employer has the right to require an employee to be on-call or to schedule on-call work as needed in the manner most advantageous to the employer and consistent with the requirements of state employment and the public interest.
- (2) Policies and procedures for authorization and payment of on-call time ~~shall~~must be established by the appointing authority.

d. Scheduling

- (1) An employee scheduled by an appointing authority for on-call duty is required to remain available through a pre-arranged means of communication.
- (2) An employee in on-call duty status who is not available when contact is attempted or who is not able to report, work ready, to duty within the prescribed time period ~~shall~~is not ~~be~~ eligible for on-call compensation for that date and may be subject to disciplinary action.

e. Timekeeping — Positive timekeeping records ~~shall~~must be maintained at the agency level for all eligible employees as defined in Paragraph ~~B, 52.e~~, above (~~Page D-37~~).

f. Method of Payment — The employer ~~shall~~must compensate employees for on-call time in cash.

g. Timeliness of Payment — The employer ~~shall~~must make a good faith effort to pay for on-call duty on the pay day of the first pay period following the bi-weekly work period in which the on-call duty is worked.

h. Overtime Impact — Compensation earned for on-call time ~~shall be~~is included as part of the regular rate for overtime premium computation (see paragraph ~~B, 1, b2, a, (2)~~ ~~Page D-35~~). The hours on-call, however, are not used in this computation, only the dollar amounts.

4. Callback

a. Rate

- (1) Full time employees called back to duty ~~shall be~~are paid at established overtime rates as outlined in Paragraph ~~B2~~, Overtime (~~Page D-35~~).

- (2) Less than full-time employees ~~shall be~~are compensated at straight time rates unless, by virtue of the callback, the employee works in excess of ~~eight (8)~~ hours in a day or ~~forty (40)~~ hours in a week. In the case of less than full-time employees working in Community Health facilities compensation ~~shall be~~is at straight time rates unless by virtue of the callback the employee works in excess of ~~eight (8)~~ hours in a day or ~~eighty (80)~~ hours in a bi-weekly pay period.

b. Basis

- (1) Employees called back to duty outside of their normal working hours are guaranteed a minimum of three hours pay, except that employees ~~shall~~must be compensated for the actual amount of time worked, if:
- (a) Called back to duty within three hours of their regular starting time; or,
 - (b) The period of callback duty exceeds three hours.
- (2) Employees on scheduled on-call status ~~shall~~are not ~~be~~ paid on-call compensation for callback duty hours.

c. Control

- (1) The employer has the right to call an employee back to duty and to schedule callback duty as necessary in the manner most advantageous to the employer and consistent with the requirements of state employment and the public interest.
- (2) Policies and procedures for authorization and payment of callback duty ~~shall~~must be established by the appointing authority.

- d. Timekeeping** — Positive timekeeping records ~~shall~~must be maintained at the agency level for all eligible employees as defined in Paragraph ~~B, 52.e~~, above ~~(Page D-37)~~.

- e. Method of Payment** — The employer ~~shall~~must compensate employees for callback time in accordance with Paragraph, ~~B, 62.f~~, above ~~(Page D-37)~~.

- f. Scheduling of Compensatory Time — The scheduling and use of compensatory time ~~shall~~must be in accordance with Paragraph ~~B, 82.i~~, above ~~(Page D-37)~~.
- g. Timeliness of Payment — The employer ~~shall~~must make a good faith effort to pay for callback duty on the pay day of the first pay period following the bi-weekly work period in which the callback duty is worked.

B. Ineligible Employees

1. ~~Exempt Employees — Employees in classifications which are assigned FLSA code "N" are ineligible for overtime. Ineligible employees are exempt from the Federal Fair Labor Standards Act overtime provisions on the basis of employment in an executive, administrative, or professional capacity as defined by the U.S. Department of Labor Regulations, Title 29, Part 541 of the Code of Federal Regulations. (See class list in Section A for FLSA codes.)~~Employees in classifications which are assigned eligibility code "Y" are ineligible for overtime. Ineligible is represented as exempt in the Human Resources Management Network system. (See the Compensation Plan for eligibility codes.)

Employees with an FLSA code of "N" use DMB form A-896 for time and attendance reporting.

2. Work Schedules

a. Scheduling and Control

- (1) Work schedules for ~~exempt~~ineligible employees ~~shall—be~~are established by the appointing authority. Employees are normally present during the regular course of the work day. However, it is recognized that demands on their time ~~will~~may vary from one pay period to another. Absences without charge to leave credits may be granted for any period of time, providing the appointing authority certifies the employee has completed the equivalent of a full pay period.
- (2) The appointing authority ~~may~~can elect to adopt a formalized compensatory time plan for ineligible employees in lieu of the above. Where the compensatory time plan is used:

- (a) The employee must be paid in cash, by Gross Pay Adjustment, for all premiums (e.g., shift, hazard except "P" rate) due for the overtime worked.
 - (b) Positive timekeeping records ~~shall~~must be maintained for all employees covered. ~~(DMB form A-896 does not provide for compensatory time.)~~ Positive timekeeping is defined as recording the total number of hours worked and the total number of leave hours used on a daily and weekly basis.
 - (c) Compensatory time ~~shall be~~is used at the convenience of the employee subject to supervisory approval based on criteria applicable to use of annual leave.
 - (d) Compensatory time ~~shall~~must be used before annual leave except where an employee at the maximum annual leave cap would thereby lose annual leave.
 - (e) Ineligible employees must not be paid for unused compensatory accruals at any time, except as provided in Civil Service Commission Rule 5-4.6.
 - (f) Employees in the senior executive service and ECP Group 4 are not eligible to accrue compensatory time, except as provided in Civil Service Commission Rule 5-4.6.
- b. Overtime — ~~Employees may be compensated~~The appointing authority must obtain prior approval from the Department of Civil Service to compensate employees in cash for overtime hours worked ~~only if approval to pay is granted by the director.~~
- (1) Appointing authority requests for approval to pay overtime to ~~exempt~~ineligible employees must be submitted to the ~~Compensation Division, Bureau of Classification and Compensation~~Department of Civil Service.
 - (2) Overtime approval requests must contain the employee's name, ~~social security~~employee identification number, classification, position ~~number~~code, justification for request, beginning date, and expiration date.

(3) If approval is granted to pay overtime, the employees ~~shall~~must be compensated at a premium rate to be determined as follows:

~~a.~~(a) If the employee's hourly rate is less than the highest rate of eligible employees, the employee will be paid time-and-one-half for overtime.

~~b.~~(b) If the employee's hourly rate is greater than the highest rate of eligible employees, the employee will be paid time-and-one-half times the highest rate of eligible employees, or straight time, whichever is greater.

Example: Highest eligible employee rate is \$26.51. Time-and-one-half times \$26.51 is \$39.77.

- Employees whose base hourly rate is equal to or less than \$26.51 receive time-and-one-half payment.
- Employees earning \$39.77 or greater receive straight time payment.
- Employees earning between \$26.51 and \$39.77 will receive \$39.77.

~~e.~~(c) Employees whose work assignments result in premiums being added to their base rates, (e.g., shift differential, "P" rate, etc.), ~~shall~~must have their overtime rate adjusted by the amount of the premium in the same proportion.

3. On-Call — The appointing authority ~~shall seek~~must obtain prior approval from the ~~director~~Department of Civil Service to compensate employees for on-call duty under special circumstances.

a. Appointing authority requests for approval to pay on-call compensation to ineligible employees must be submitted to the Department of Civil Service. This request should address the following criteria:

- (1) Physical restrictions placed on the employee while on-call.
- (2) Maximum period of response time allowed.
- (3) Percentage of calls expected to be returned by the on-call employee.
- (4) Frequency of expected calls during on-call time.
- (5) Potential use of the on-call time by the employee.

(6) Disciplinary action taken against employees who fail to answer calls.

- ~~a.b.~~ Compensation will be approved, compensation is paid at the rate of one hour straight time credit for each five hours of on-call.
- ~~b.c.~~ Payment ~~shall be~~ is either cash or compensatory time. Scheduling and use of compensatory time ~~shall~~ must be in accordance with Paragraph ~~H, B, 1B, 2, a~~ above ~~(Page D-41)~~.
- ~~c.d.~~ Employees called back to work while in on-call status will continue to receive on-call payment while on callback duty unless exception has been granted to pay employees callback pay.
4. Callback – The appointing authority may seek approval from the director to compensate employees for callback duty under special circumstances.
- a. If approved, employees will be compensated in the same manner as eligible employees (See Paragraph ~~I, D, A, 4~~ Page D-40).
- b. Computation of premiums, and payment ~~shall~~ must be in accordance with the ~~procedures~~ regulations for overtime compensation (see Paragraph ~~H, B, 1B, 2, a~~ Page D-41).
- C. Exceptions to the above standards for non-exclusively represented employees may be requested by the appointing authority. ~~Such~~ These requests should be submitted to the state personnel director.

CONTACT

Questions regarding this regulation should be directed to the Department of Civil Service, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909, (517) 335-7862 or (517) 373-7618, or MDCS@state.mi.us.

NOTE: Regulations are issued by the State Personnel Director under authority granted in the State of Michigan Constitution and the Michigan Civil Service Commission Rules. Regulations that implement Commission Rules are subordinate to those Rules.